

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

J.G.

**v.
THOMAS E. GAVIGAN**

RESPONDENT,

APPELLANT.

DOCKET NUMBER WD78603 Consolidated with WD78604

DATE: April 26, 2016

Appeal From:

Mercer County Circuit Court
The Honorable Matthew M. Krohn, Judge

Appellate Judges:

Division One: Victor C. Howard, Presiding Judge, Gary D. Witt, Judge and Zel M. Fischer,
Special Judge

Attorneys:

Nhu T. Nguyen, St. Joseph, MO, for respondent.

John L. Young, Princeton, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

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WESTERN DISTRICT**

J.G.,

RESPONDENT,

v.

THOMAS E. GAVIGAN,

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No. WD78603 Consolidated with WD78604

Mercer County

Before Division One: Victor C. Howard, Presiding Judge, Gary D. Witt, Judge and Zel M. Fischer, Special Judge

The Circuit Court of Mercer County granted an Adult Protection Order and Child Protection Order for the protection of Respondent J.G. ("Respondent") and her daughter N.G. against the Appellant, Thomas E. Gavigan ("Gavigan"). However, after the full orders of protection were granted and in force, Respondent voluntarily dismissed the actions underlying those orders. The dismissals were granted in the discretion of the trial court and the causes of action were dismissed. Gavigan now appeals the original judgments that granted the full orders of protection.

WE DISMISS THE APPEAL

Division One holds:

The Court dismisses the appeal *sua sponte* because we do not have jurisdiction to decide the appeal. After the full orders of protection were entered, the Respondent voluntarily dismissed both actions underlying the orders of protection and the dismissals were granted by the trial court. Chapter 455 gives the trial court continuing jurisdiction over a full order of protection even after the judgment becomes final, including the power to modify and terminate the orders at any time. We hold this also gives the trial court the discretion to dismiss the action without prejudice, at the request of the petitioner, even after a full order of protection has been issued, pursuant to Rule 67.02(b). This is not a dismissal as of right pursuant to Rule 67.02(a) but a dismissal under Rule 67.02(b) which requires the approval of the trial court, is subject to grant or denial in the discretion of the trial court and is subject to any terms and conditions the trial court may deem proper. The grant of such a dismissal extinguishes the order of protection at its inception, as though it had never been filed or granted.

Because the underlying actions were dismissed and the orders of protection were extinguished as though never granted, Gavigan may not appeal as he is not an aggrieved party for the purpose of appeal. Accordingly, this Court does not have jurisdiction to entertain this appeal.

Opinion by Gary D. Witt, Judge

April 26, 2016

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